No. 12,298

In the United States Court of Appeals for the Ninth Circuit

ALASKA STEAMSHIP COMPANY, A CORPORATION, APPELLANT

v.

M. P. MULLANEY, COMMISSIONER OF TAXATION, TERRITORY OF ALASKA, APPELLEE

ON APPEAL FROM THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, DIVISION NUMBER ONE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

THERON LAMAR CAUDLE,
Assistant Attorney General.

ELLIS N. SLACK,
I. HENRY KUTZ,
Special Assistants to the Attorney General.

MASTIN G. WHITE,
Solicitor, Department of the Interior.

IRWIN W. SILVERMAN,
Chief Counsel, Division of Territories and Island Possessions, Department of the Interior, Of Counsel.

INDEX

CITATIONS

Cases:

Statutes:

Miscellaneous:

Miscellaneous—Continued

In the United States Court of Appeals for the Ninth Circuit

No. 12,298

ALASKA STEAMSHIP COMPANY, A CORPORATION, APPELLANT

v.

M. P. MULLANEY, COMMISSIONER OF TAXATION, TERRITORY OF ALASKA, APPELLEE

ON APPEAL FROM THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, DIVISION NUMBER ONE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

THE INTEREST OF THE UNITED STATES

Under date of August 4, 1949, the Court granted leave to the United States to file a brief herein as *amicus curiae.*

This brief is filed to protect the interests of the United States. The Territory of Alaska has budgeted and incurred obligations in anticipation of the revenues to be derived from the tax on income during the calendar year 1949, imposed by the "Alaska Net Income Tax Act" (Session Laws of Alaska (1949) c. 115), assailed by plaintiff-appellant, Alaska Steamship Company, on this appeal. Invalidation of this statute will

seriously and adversely affect the whole economy of the Territory and immeasurably cripple the functions of the Territorial Government; the whole range of governmental services, from the maintenance of law and order to the safeguarding of public health, would be affected; territorial revenues would be considerably less than territorial obligations and expenditures; the United States Department of the Interior might be compelled to seek an appropriation from Congress to meet the deficit. Thus, the United States possesses an important financial interest in the outcome of this litigation.

Moreover, the paramount interest of the United States in the maintenance of good government and law and order in its territories is self-evident. The Constitution imposes an obligation upon the United States of guaranteeing the maintenance of law and order in the states themselves. Article IV, Section 4. The force and immediacy of such an obligation upon the United States is even clearer in the case of one of its possessions. The United States has thus, on this ground alone, an important and direct interest in the outcome of this litigation.

Furthermore, the instant litigation raises fundamental questions with respect to the extent of the authority possessed by the legislature of the Territory of Alaska under the Constitution and the Organic Act of Alaska. Act of August 24, 1912, c. 387, 37 Stat. 512, as amended. The correct determination of these questions of constitutional and organic law represents a further important interest of the United States in the outcome of this litigation.

It is for these compelling reasons that the Government of the United States appears in this case as *amicus curiae.*

OPINION BELOW

The opinion of the District Court for the Territory of Alaska, Division Number One (R. 44-60) is reported in 84 F. Supp. 561.

QUESTIONS PRESENTED

1. Whether Chapter 115, Session Laws of Alaska, 1949, known as the Alaska Net Income Tax Act, imposing a net income tax, is a valid exercise of the taxing authority of the Territory.

2. Whether, if some provisions of the Alaska Net Income Tax Act are invalid, the remainder of the Act may be given effect.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved are set forth in the Appendix, *infra.*

STATEMENT

The District Court made the following findings of fact:

Plaintiff-appellant, Alaska Steamship Company, hereinafter sometimes denoted as "the corporation", is a corporation organized under the laws of the State of Washington with its principal place of business at Seattle, and qualified to do business in the Territory of Alaska. Defendant-appellee Mullaney is the Commissioner of Taxation for the Territory of Alaska and will usually be denoted below as "Commissioner". The instant action arises under the Territorial Act approved March 26, 1949, designated as "Alaska Net Income Tax Act" (being Chapter 115 of the Session Laws of Alaska (1949)), and which will usually be referred to herein as "the Income Tax Act". (R. 62.)

The corporation engaged in interstate commerce in the operation of a line of vessels transporting freight

and passengers between Seattle and all principal ports of the Territory of Alaska. For approximately 75% of the time spent on voyages the corporation's vessels are in territorial waters and in waters off shore from the coast of Alaska; part of the voyages are made through Canadian waters and part outside the three mile limit off the Alaskan coast. In this trade at all times the corporation operates at least twelve vessels. At the time of the trial of this case in April, 1949, the corporation employed approximately 706 seamen who were nonresidents of the Territory. The seamen belong to various unions including the Sailors Union of the Pacific, and are employed under union contracts and paid off in Seattle at the end of each voyage upon the return of the vessels to Seattle, in accordance with the union scale and the union contract. (R. 62-63.)

Under the provisions of the Alaska Net Income Tax Act, the corporation has deducted the sum of $7,339.75 from the wages of seamen for the quarter ending March 31, 1949. Preliminary injunctions issued on February 4 and April 4, 1949, by the United States District Court for the Western District of Washington, Northern Division, in a suit brought by John E. Humes, Bob Domtroff, and Sailors Union of the Pacific against the corporation, ordered the corporation to withhold the tax from the wages of its seamen and personnel of its vessels and to deposit the amount so withheld in a special fund subject to the order of that court, and prohibited the corporation from paying any portion to the Commissioner. (R. 64.)

In addition, the corporation employed nineteen resident Alaskans who are agents, assistant agents and shore employees. The Alaska income tax on their wages was withheld from the period commencing January 1, 1949, until the end of the March quarter, amounting to $2,319.96. This sum was impounded pursuant to the

order of the court below (R. 64), which directed the corporation, pending final determination of the instant case, to pay into the court below all amounts withheld from the salaries of resident Alaskans (R. 42-43). The Commissioner demanded that the corporation pay the withholding tax imposed by the Act and the corporation had no adequate remedy pending the decision in the court below except by means of the preliminary injunction which that court issued. (R. 65.)

The Extraordinary Session of the Territorial Legislature which convened on January 6, 1949, and which passed an Income Tax Act on January 22, 1949 (Chapter 3 of Session Laws of Alaska (1949)), was composed of members who, with the exception of long term members elected in October, 1946, were elected in October, 1948, and whose terms would not commence until the convening of the legislature in regular session on January 27, 1949. Further, the terms of the members who were elected in October, 1946, and of the regular term members elected in 1944 who took their seats on the fourth Monday of January, 1947, did not expire until the convening of the legislature in regular session on January 27, 1949, and they should have composed the membership of the Extraordinary Session which was convened on January 6, 1949. (R. 65.)

The regular session of the 1949 Territorial Legislature reenacted the Alaska Net Income Tax Act as Chapter 115, Session Laws of Alaska (1949), approved March 26, 1949, and in accordance with its Section 16 the tax withholdings effectuated under the Act passed by the Extraordinary Session in January were ratified and confirmed. (R .66.)

The term "Continental Shelf" as used in Section 5 B(1) of the Income Tax Act in the clause "including the waters over the continental shelf", although indefinite in its use, may, under the severability provisions

of the Act (Section 15), be eliminated without affecting the remainder of the Act. (R. 66.)

The evidence and pleadings do not show that there has been any amendment of either the United States Internal Revenue Code or the Regulations promulgated by the United States Commissioner of Internal Revenue since the enactment of Chapter 115, Session Laws of Alaska (1949). (R. 66.)

On the basis of the foregoing, the District Court concluded that the Income Tax Act, c. 115, Session Laws of Alaska (1949), is a valid Act and the temporary injunction, which it had issued, should be vacated and the complaint dismissed. (R. 67.) Further, while the Act (Chapter 3) passed by the Extraordinary Session is invalid, since that body was not constituted in accordance with law, the tax withholdings made pursuant to it are valid under Section 16 of the later Act. (R. 66-67.)

Accordingly, on July 8, 1949, judgment was entered dismissing the complaint and vacating the preliminary injunction. (R. 68-69.)

SUMMARY OF ARGUMENT

A. The Organic Act vested the Legislature of Alaska with the plenary taxing power of Congress over the Territory. The general power to legislate and the full power to tax were conferred in language sweeping and comprehensive in character. Legislation enacted by the Territorial Legislature under this unlimited power expressly given can only be held violative of the Constitution when palpably arbitrary.

B. The challenged statute does not improperly delegate to Congress the legislative power of the Territory. The manifest design of the territorial income tax is to take the federal income tax as the starting point and to impose in general a tax equal to 10% of the federal income tax. Returns are required from the same persons

and at the same time as federal income tax returns; and in the case of employees, are collected by salary deduction and withholding under the same circumstances as under the Internal Revenue Code. Thus, the employer is required merely to withhold for the Alaskan tax 10% of the federal tax withholding.

No amendment of the Federal Act was established subsequent to the enactment of the Territorial Act, and hence, so far as the instant record is concerned, the territorial tax here involved adopted by reference only *existing* federal law. Hence, in this state of the record, appellant's principal point of objection, namely, that the territorial statute incorporated by reference prospective amendments to the Internal Revenue Code made by Congress, was correctly held unavailable by the court below. The instant record does not appropriately present such a question and it is a familiar principle that a statute will not be ruled unconstitutional or otherwise in contravention of fundamental law upon a hypothetical state of facts. The decision of the alleged issue of fundamental law by this Court could involve no legal consequence for either appellant or its employees here. One, who would strike down a statute as unconstitutional, must show that the alleged unconstitutional feature injures him; he is not the champion of any rights except his own.

In any event, the adoption by the Legislature in this statute of continued federal-territorial income tax uniformity as a territorial policy constituted no invalid delegation. Whatever the rule with reference to alleged application of legislative power involved in state legislation adopting by reference prospective federal legislation, there can be no constitutional objection to action by the Territorial Legislature, the agent of Congress, in delegating back to Congress, its creator, the authority originally received from Congress.

Again, the Legislature has not left to Congress or others the solution of the tax problem before it, but by the challenged statute has itself devised a remedy reasonably calculated to meet the peculiar situation confronting it. The practical advantages of simplicity and economy in administration and the large savings in time and money both to the Territory and its taxpayers derived from a uniform federal territorial tax system are clear, especially to Alaska with its vast area and widely scattered population. Indeed, the urgent need for coordination between federal and state governments in the income tax field has focused attention in recent years. Avoidance of the serious evils arising from lack of uniformity seems called for even more plainly in the case of an income tax imposed by a federal dependency. As a matter of fact, the Income Tax Act did not expressly make any delegation to Congress; and the statutory reference is to an external standard, namely, the Internal Revenue Code as now in effect or hereafter amended. The Legislature might reasonably deem it in the public welfare to adopt as its policy a program for keeping the local requirements exactly in pace with the federal. The Legislature has not abandoned any real control of the terms or rate of tax, and the rule established in the challenged statute is sufficiently precise and definite in practice and in the light of federal income tax history and the retained power of correction. Artificial conceptualism aside, the future action of Congress upon the federal income tax between sessions of the Alaskan Legislature is an external event, which the Legislature might here in the public interest reasonably risk to obtain the enormous benefits from uniformity.

No legislature is continuously in session and the risk is always present that, as a practical matter, before it reconvenes the law for the time being may cease to re-

flect its will, as a result of intervening events or the acts of others. The Legislature has not abandoned any of its essential powers.

C. The challenged statute does not improperly delegate to the United States Commissioner of Internal Revenue the legislative power of the Territory. The mere fact that the Legislature chose to vest the power to fill in details in the statute in an appropriate federal rather than territorial official does not in itself invalidate the statute. Indeed, such authority may on occasion properly be conferred upon even a private body. Besides, the statute vests full discretion in the Territorial Tax Commissioner to reject the federal and promulgate in lieu thereof local regulations. Finally, there was no showing in this record that any federal Regulations, not in existence at the time of the approval of the territorial statute, are applicable to the rights of any taxpayer involved in this litigation.

The statute stated intelligible principles or standards reasonably clear whereby administrative discretion must be governed, and, hence, made no improper delegation to the Territorial Commissioner of Taxation.

D. The statutory provisions for adoption by reference of future amendments to the Internal Revenue Code do not cause the statute to be void for indefiniteness or uncertainty. The Alaskan tax is no more invalid for this reason than is the federal income tax with which it is coordinated.

E. The uniformity clause of the Organic Act of Alaska does not forbid the imposition of a graduated income tax. The uniformity clause imposes geographic not intrinsic uniformity. In view of the full power of taxation which Congress proposed to vest in the Legislature, a construction of the Organic Act, which would

deny to Alaska the power to impose a progressive income tax and to gauge income tax liability in accordance with ability to pay, is unreasonable. It is unlikely that Congress intended to grant less power in this respect to the Legislature of Alaska than to the Legislatures of the sister dependencies of Hawaii and Puerto Rico, where graduated income taxes have long been levied.

F. The classifications made by the statute were well within the area of legislative discretion, and were not arbitrary nor in denial of due process. Appellant has not sustained the heavy burden of negativing every conceivable basis which might support the classifications provided in the statute. Again, these questions as, for example, with respect to the apportionment formulae, which appellant seeks to raise, are not presented by the instant record at all.

G. Forfeiture of licenses granted by the Territory might validly be imposed as a sanction to assist in collection of past due territorial taxes. However, the record does not present this question either.

H. Ratification in the instant Act of the withholdings made under the repealed Chapter 3 of the Session Laws of Alaska was within the legislative power. The taxes withheld were due retroactivly under the terms of the valid instant statute, and no adequate reason appears why the Legislature could not in the exercise of its discretion ratify and confirm such prior withholdings in collection of the instant tax.

I. The withholding provisions on wages of seamen are not in conflict with congressional legislation. The familiar device for collecting income taxes by requiring an employer to deduct and withhold the tax from wages

does not fall within the meaning of an attachment or arrestment from any court.

J. In any event, the Legislature intended the valid provisions of the statute to be severable from the provisions alleged here to be invalid. It is not reasonable, for example, to suppose the Legislature would have vitiated the entire income tax for the year 1949 in the event it should be held that prospective changes in the Internal Revenue Code could not properly be adopted in the Alaskan Act, and thereby imperil the support and operation of the Territorial government. Moreover, appellant has no standing here to raise an alleged issue of non-severability, for it cannot show that it has been injured by any purportedly invalid part of the statute.

ARGUMENT

The challenged provisions of the Alaska Net Income Tax Act (C. 115, Session Laws of Alaska (1949)) constitute a valid exercise of the taxing authority of the Territory

A. *The Organic Act vested the Legislature of Alaska with the plenary taxing power of Congress over the Territory*

The Organic Act of Alaska (Act of August 24, 1912), c. 387, 37 Stat. 512, was intended to confer upon the organized Territorial Government of Alaska, an autonomy similar to that of the states and full power of local self-government. The power of taxation, the power to enact and enforce laws, and other characteristic governmental powers were vested. A typical American governmental structure was erected; a body politic—a commonwealth—was created. Cf. *Puerto Rico* v. *Shell Co.,* 302 U. S. 253, 261-262.

The general power to legislate and the full power to tax were conferred in language sweeping and comprehensive in character. Thus, Section 4 provided (Appendix, *infra*) "the legislative power and authority of

said Territory shall be vested in a legislature," and Section 9 read broadly (Appendix, *infra*): "The legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States". Moreover, the earlier Section 3 (Appendix, *infra*), made clear the intent to include existing territorial law among such "rightful subjects of legislation", as follows:

> except as herein provided all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress *or by the legislature*: (Italics supplied)

and again, the same section expressly referred to (Appendix, *infra*), "the authority herein granted to the legislature to alter, amend, modify, and repeal laws in force in Alaska", excluding (with exceptions here immaterial) only the customs, internal-revenue, postal, or other general laws of the United States. Further, it is here significant that these stated limitations against amendment or repeal of federal taxes were explicitly not to restrict the authority to impose local taxes, for the same Section 3 (Appendix, *infra*): "*Provided further,* That this provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses."

In *Alaska Fish Co.* v. *Smith,* 255 U. S. 44, 49, Mr. Justice Holmes, speaking for the Supreme Court, sustaining a taxing act passed by the Legislature of Alaska, declared that under the Organic Act "the legislature has the full power of taxation" and, construing Section 3, *supra,* took "into account the express and unlimited authority to impose additional taxes and licenses". Again, in another case, Mr. Justice Holmes, speaking for the Court, subsequently characterized the power to tax conferred under the Organic Act as "the unlimited

power expressly given". *Pacific Fisheries* v. *Alaska,* 269 U. S. 269, 277.

It follows that the holding of this Court in *Kitagawa* v. *Shipman,* 54 F. 2d 313, certiorari denied, 286 U. S. 543, with respect to taxing acts passed by the Legislature of Hawaii applies equally to the Alaskan Act here, as follows (p. 318):

> When Congress gave full legislative authority to the state Legislature of the Territory of Hawaii to legislate upon "all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States locally applicable" (see 48 USCA § 562), it vested in the Legislature of Hawaii *the full taxing power which had theretofore existed in Congress over that Territory,* and the legislation enacted by the territorial Legislature under this delegated power can only be held violative of the Constitution of the United States when palpably arbitrary. (Italics supplied.)

Accordingly, the statute here challenged was passed in exercise of a legislative power identical with the full power to tax inherent in Congress over a territory, and upon appellant rests the heavy burden of negativing every conceivable basis which might support the tax even in the exercise of so plenary an authority.

B. *The challenged statute does not improperly delegate to Congress the legislative power of the Territory*

The tax in issue is the first general Territorial income tax which Alaska has imposed.[1] Previously there were, however, the license taxes computed on income, quoted

[1] As already noted, the instant statute repealed the similar income tax imposed on January 22, 1949 (c. 3, Session Laws of Alaska (1949)), but ratified tax withholdings and other administrative steps taken under the prior statute (Section 16, Appendix, *infra*), and is similarly applicable for taxable years commencing January 1, 1949 (Section 4).

in the footnote,[2] repealed by the instant Act (Section 16, Appendix, *infra*) and a "sales profits tax" of 1% levied upon all profits in excess of $1,000 upon sales of real estate and other capital assets. 1 Alaska Compiled Laws Annotated (1949), Sections 48-6-1 to 48-6-5.

The design of the Territorial Income Tax Act is manifest; the federal income tax is taken as the starting point and the Territory imposes in general (Section 5 A. (1), Appendix, *infra*);

> (1) a tax equal to 10 percent of the total income tax that would be payable for the same taxable year to the United States under the provisions of the Internal Revenue Code without the benefit of the deduction of the tax payable hereunder to the Territory.

Returns are required from the same persons and at the same time as the federal income tax returns (Section 7

---

[2] 1 Alaska Compiled Laws Annotated (1949):

§ 35-1-11. *Businesses, professions or callings requiring license: Amount of license.* * * *

3rd. *Any person, firm or corporation selling electricity for light, power and other purposes and/or steam for heating purposes and supplies therefor, three-fourths of one percent. of the gross receipts in excess of twenty-five hundred dollars per annum from light, power and steam sold;* three-fourths of one percent. of the net profits from supplies sold, but this tax shall not apply to plants owned by municipalities. (Italics supplied; italicized matter not repealed.)

* * * * *

7th. *Fisheries:*

* * * * *

(f) * * *

In addition to the above tax, salmon canneries shall pay one percent. of their net annual income. The net income shall be determined in the same manner as the net income is determined under the Federal Income Tax Law, except that no deduction shall be allowed on account of interest on bonds or money borrowed except on account of other Territorial taxes paid.

A, Appendix, *infra*), and Section 7 B (Appendix, *infra*) states:

> * * * The total amount of tax imposed by this Act shall be due and payable to the Tax Commissioner at the same time and in the same manner as the tax payable to the United States Collector of Internal Revenue under the provisions of Section 56 of the Internal Revenue Code.

In the case of employees, such as the taxpayers instantly involved, whose federal income tax is collected by withholding under subchapter (D) of Chapter 9 of the Internal Revenue Code, Alaska similarly imposes by withholding, 10% of the federal salary deduction, as follows (Section 5 B, Appendix, *infra*):

> * * * There is hereby levied upon and there shall be collected from every employee (including persons referred to in subsection (C) of Section 1621 of the Internal Revenue Code) whose sole income in Alaska during the taxable year consists of wages or salary, a tax in the amount of ten percent of the tax deducted and withheld under the provisions of sub-chapter (D), Chapter 9, of the Internal Revenue Code, which tax is to be withheld by the employer under the provisions of Section 8 of this Act. * * *

The correlative duty to deduct at the source 10% of the federal income tax withheld from wages or salary payments is imposed on the employer, such as appellant here. Section 8 B (Appendix, *infra*).

The practical advantages of simplicity and economy both to the Territory and to taxpayers inherent in this statutory plan are clear: to the taxpayers, large savings in time and money in preparation of returns; to the Territory great economy in cost of administration, which in the last analysis also redounds to the taxpayers. As a further important salutary incident, only one audit

for both taxes becomes requisite. See Section 7 C (Appendix, *infra*), quoted in the footnote.[3] Besides, the meaning established in the federal law for many terms and concepts, after years of litigation, is gained without more for the local law.

The Territorial statute defines the Internal Revenue Code, which it thus incorporates, as follows (Sections 3 A (8), and B, Appendix, *infra*):

> Section 3. DEFINITIONS.
>
> A. IN GENERAL: For the purpose of this Act—
>
> * * *
>
> (8) The words "Internal Revenue Code" mean the Internal Revenue Code of the United States (53 Stat. 1) as amended or as hereafter amended.
>
> * * *
>
> B. REFERENCES TO INTERNAL REVENUE CODE.
>
> (1) Whenever the Internal Revenue Code is mentioned in this Act, the particular portions or provisions thereof, as now in effect or hereafter amended, which are referred to, shall be regarded as incorporated in this Act by such reference and shall have effect as though fully set forth herein.
>
> (2) Whenever any portion of the Internal Revenue Code incorporated by reference as provided

---

[3] Section 7. RETURNS AND PAYMENT OF TAX.

* * * * *

C. FEDERAL INCOME TAX RETURN. Any taxpayer, upon request by the Tax Commissioner, must furnish to the Tax Commissioner a true and correct copy of any tax return which he has filed with the United States Collector of Internal Revenue. Every taxpayer must notify the Tax Commissioner in writing of any alteration in, or modification of, his Federal income tax return and of any recomputation of tax or determination of deficiency (whether with or without assessment). A full statement of the facts shall accompany this notice, which must be filed within twenty days after such modification, recomputation or determination of deficiency, and the taxpayer must pay the additional tax or penalty hereunder.

> in Paragraph (1) of this subsection refers to rules and regulations promulgated by the United States Commissioner of Internal Revenue, or hereafter so promulgated, they shall be regarded as regulations promulgated by the Tax Commissioner under and in accord with the provisions of this Act, unless and until the Tax Commissioner promulgates specific regulations in lieu thereof conformable with this Act.

1. *The Territorial tax here levied adopted by reference only existing federal law*

It is in these provisions last quoted that appellant principally finds the alleged improper delegation of legislative authority by the Territorial Legislature, in that thereby the Territorial Act incorporated assertedly not merely the terms of the federal Internal Revenue Code existing at the time of the passage of the Alaskan Act, but amendments to the federal legislation which may be adopted in the future. (Br. 14-18.) As a matter of fact, however, subsequent to the enactment of the challenged Act, as the court below found, no such amendment of the federal Act was established. (R. 53, 66.) Hence, as the District Court further recognized, the case here is simply one of incorporation by reference of the pre-existing law which indisputably involves no improper delegation. *Franklin* v. *United States,* 216 U. S. 559, 568-569; *Santee Mills* v. *Query,* 122 S. C. 159, 115 S. E. 202. As explained by the Supreme Court of Georgia sustaining in *Featherstone* v. *Norman,* 170 Ga. 370, 395, 153 S. E. 58, a Georgia income tax of like design:

> It makes a class of income taxpayers composed of persons who have a net income equal to that fixed by the general government, and levies a tax on such income equal to thirty-three and one third per cent. of that which Congress levies on net income under the United States income-tax statute.

> All this is the handiwork of the Georgia legislature. In this work Congress takes no hand. So this act in no way delegates to Congress the legislative power of the State. If the legislature had adopted all the features of the Federal act, this would not be delegating its power to Congress. By the act of 1784, the Georgia legislature adopted the common law of England and such of the statute laws of that country as were usually in force in the province of Georgia on May 14, 1776. Cobb's Digest, 775. This did not in any way delegate to England the legislative power of Georgia. * * *

Again, in this state of the record appellant's principal point of objection was correctly held unavailable by the court below. (R. 53.) A statute will not be ruled invalid as unconstitutional or otherwise in contravention of fundamental law upon a hypothetical state of facts. Thus, the Supreme Court held in *Tennessee Pub. Co.* v. *Amer. Bank,* 299 U. S. 18, 22:

> It is a familiar rule that the court will not anticipate the decision of a constitutional question upon a record which does not appropriately present it. *Liverpool, N.Y. & P.S.S. Co.* v. *Commissioner,* 113 U. S. 33, 39; *Cincinnati* v. *Vester,* 281 U. S. 439, 448, 449; *Arizona* v. *California,* 283 U. S. 423, 463, 464.

Appellant's employees were not prejudiced by the alleged invalid provisions since these were not enforced in this case, there having been no amendments of the incorporated federal legislation made or applicable to them subsequent to enactment of the Territorial Act. The decision of the alleged issue of fundamental law by this Court, which appellant seeks to raise, could involve no legal consequences for the parties here. One who would strike down a statute as unconstitutional must show that the alleged unconstitutional feature injures him. *Premier-Pabst Co.* v. *Grosscup.* 298

U. S. 226, 227. The identical point was made in *Commonwealth* v. *Alderman,* 275 Pa. 483, 487, 119 Atl. 551, which also involved incorporation in a state statute by reference of future as well as present federal legislation.

Appellant further urges that the allegedly invalid provisions incorporating future changes in the Internal Revenue Code are not separable from the valid. (Br. 32-34.) This contention, which seems plainly unsound, is discussed, *infra,* in subpoint J. Indeed, appellant has no standing here to raise an alleged issue of severability for, as already explained, the purportedly invalid portion does not hurt appellant or its employees and there will be time enough to consider complaints on ground of nonseverability after a person injured by the alleged invalid portion has come forward with request for relief. *Yazoo & Miss. R. R.* v. *Jackson Vinegar Co.,* 226 U. S. 217, 219-220; *Dollar Co.* v. *Canadian C. & F. Co.,* 220 N. Y. 270, 282-283, 115 N. E. 711. "The plaintiffs are not the champions of any rights except their own." *Henneford* v. *Silas Mason Co.,* 300 U. S. 577, 583.

2. *In any event, the adoption by the Legislature in this statute of constant federal-territorial income tax uniformity as a territorial policy constitutes no invalid delegation*

In any event, the lower court correctly held the statute, as written, to constitute no improper delegation. (R. 53.) For present purposes it is not disputed that the taxing power which Congress by the Organic Act conferred upon the Legislature was intended to be exercised by the Legislature, that the actual abdication or transfer of this power to a third party would *pro tanto* effect an alteration in the prescribed frame of the Territorial Government contrary to the con-

gressional mandate. Here, however, it is noteworthy that strictly a federal statute and not a Constitution is claimed to have been infringed, a statute, whose source was not the People (as would be true in the case of a Constitution) but the very agency, namely, Congress, to whom it is asserted an improper delegation was made. Yet Congress may, as a matter of course, at any time alter and amend its creature, the Organic Act, and itself directly exercise legislative power over the Territory. Hence, such exercise following "delegation" to it by the Territorial Legislature could effectually ratify and validate any *pro tanto* modification by the Legislature of the Organic statute implicit in the hypothetical "delegation". Indeed, this reasoning was adopted by the Supreme Court of Puerto Rico as one of its grounds in sustaining the insular Emergency Price Control Act, where in *Irizarry* v. *District Court,* 64 P.R.R. 90, 101 (English ed.), (also reported unofficially in 2 Pike and Fischer OPA Opinions and Decisions 2196 (decided July 28, 1944)), it said:

> In addition, it might well be urged that, whatever the rule with reference to the alleged abdication of sovereignty involved in state legislation adopting by reference prospective Federal legislation, there may be no constitutional objection, to action by the Legislature of Puerto Rico, the agent of Congress, in delegating back to Congress, its creator, the authority to legislate it originally received from Congress.

See also *United States* v. *Heinszen & Co.,* 206 U. S. 370, 382-385. As a matter of fact, Congress in the Organic Act retained expressly supervisory power over territorial legislation (Section 20, Appendix, *infra*):

> Sec. 20. Laws Shall be Submitted to Congress. —That all laws passed by the Legislature of the Territory of Alaska shall be submitted to the Congress by the President of the United States,

and, if disapproved by Congress, they shall be null and of no effect.

Again, from another aspect the question here presented is whether the Legislature has left to Congress or others the solution of the tax problem before it, or, on the other hand, has by the challenged statute itself devised a remedy reasonably calculated to meet the situation confronting it. The answer requires first of all, an analysis of the problem which the Legislature faced in framing the income tax. The vast Territory, approximating 585,000 miles in extent and the widely scattered population numbering upwards of 75,000, presented obvious and serious difficulties in administration and collection, but substantially identical with those with which the federal income tax administration had for thirty years been coping. Since the Territorial tax was only one tenth of the federal, economy in administration was the more essential. The advantages to all concerned in economy and simplicity which are derived by virtue of uniformity with federal income tax administration have already been stated. Surely the Legislature has not here made an arbitrary choice but, on the contrary, an eminently reasonable one.

Indeed, the urgent need for coordination between the federal and state governments in the income tax field has been the subject of much thought and discussion in recent years. A detailed history through 1942 of the movement for intergovernmental fiscal coordination in the United States is contained in a report on "Federal, State, and Local Fiscal Relations" submitted to the Secretary of the Treasury by a special committee designated to conduct a study on that subject and transmitted to the Senate by that body's own direction. S. Doc. No. 69, 78th Cong., 1st Sess. In this significant report coordination in federal and state income taxation was regarded "of first importance" (p. 417), and

efforts towards uniform laws and joint returns suggested (pp. 148-149):

> At one time Federal officials and those of New York State attempted to work out a joint Federal-State income tax return. But no very serious effort was made and the negotiators appear to have been easily discouraged. Similar efforts in Canada proved successful in the case of four Provinces with results reported to be eminently satisfactory. Such joint returns require a substantially uniform definition of income, but permit variations in exemptions, deductions, and rates. State laws differ from Federal and from each other in a few important respects and in many insignificant details. But there is also a very large amount of common ground. Were a few States to achieve a working arrangement with joint returns, it seems reasonable to assume that others would follow, and also that a movement towards uniformity in definition would receive a very powerful impetus.

Elimination of dual administration was recommended (p. 452):

> By far the most promising approach to coordination in the income-tax field is from the angle of administration. * * * Some cooperation has already been achieved in the United States. Utilization by the States of Federal income-tax information is already developed to some extent and some informal cooperation between administrative staffs now occurs. But the field has scarcely been scratched. Joint returns, joint audits, joint use of personnel, more uniform laws, are a few of the possibilities. As previously suggested, a Federal-State Fiscal Authority could do much to facilitate development in this field. Moreover, the broad jurisdictional authority and administrative facilities of the Federal Government are needed, also, to uncover and to levy upon many income sources currently escaping taxation.

The Treasury carried this study forward to July, 1947, in a sequel entitled "Federal-State Tax Coordination" which was printed in the report of the House Hearings before the Committee on Ways and Means, Revenue Revisions, 1947-1948, Part 5, pp. 3676-3706, where the following pertinent statements appear (pp. 3677, 3678-3679):

> The widespread use of the income tax by the Federal Government and the States and its occasional use at local levels has focused attention on the need for intergovernmental coordination in this field. In recent years the income tax has become the most important single source of Federal revenue and is an important source of State revenue as well. * * *
>
> The imposition of duplicate levies on the same tax base, aside from adding to the tax burden, increases the cost of taxpayers' compliance (particularly for corporate taxpayers) and involves duplicate administrative costs for the taxing governments.
>
> * * * * *
>
> Another factor which has made for coordination of Federal and State income taxes is the adoption of similar definitions of tax bases. While there are incidental variations which suffice to complicate appreciably the compliance problems of taxpayers, definitions of net taxable income in the several States do not on the whole differ markedly from one another or from the Federal definition. Several States use the Federal definition of "net income" for corporate tax purposes, with certain adjustments. The progressive individual income tax enacted by Vermont this year adopts the Federal definition of "net income" with certain adjustments, e.g., the exclusion of income expressly exempted from taxation by the States and the exclusion of capital gains and losses. It also adopts the Federal system of personal exemptions ($500 each for the taxpayer, his spouse, and each

> of his dependents), and uses the Federal definition of "dependent." The Federal definition of "adjusted gross income" is used (except for exclusion of capital gains and losses) and an optional simplified tax table is provided for all persons whose adjusted gross income is less than $5,000.
>
> The adoption of uniform definitions of income by the States and the Federal Government would make the use of a joint Federal-State income tax return practicable. This would also clear the way for single administration of Federal and State taxes in the event that it was desired to eliminate duplicate administration. It should be kept in mind that the use of the same tax base and the same tax return would not necessarily require the various States to impose similar tax rates. Each State could continue to adjust its rates and exemptions to suit its own revenue needs.
>
> In some cases, present differences between the Federal and the State tax bases are so small as to suggest that uniformity could be quite readily obtained. * * *

A thoughtful article by the experienced Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance has recently summarized the advantages of uniformity (Kassell, No Uniformity in State Income Taxes—Why? 87 Journal of Accountancy 293, 296 (April, 1949)):

> There are many obvious advantages to a state adopting federal net income as a starting point in determining its personal income taxes:
>
> (1) From the states' standpoint, there would be great savings in the cost of tax administration and probably increased revenue.
>
> (2) From the taxpayers' standpoint, there would be great economies in the preparation of returns.
>
> (3) There would be one rather than possibly 49 separate bodies of law on the same subject matter,

with the consequent avoidance of duplicate litigation.

(4) There could be one audit rather than many.

(5) Returns would be more complete and correct.

Mr. Kassell suggests the creation of a federal-state agency by way of remedy to deal with the problems arising from lack of uniformity in income tax laws, which (p. 297)—

> might eventually get to joint returns, joint audits, and possibly even administration of overlapping taxes.
>
> * * * * *
>
> I believe that unless the federal and state governments cooperate in this field *inefficiency in tax administration and unnecessary hardship on taxpayers will be continued.* * * * (Italics supplied.)

Avoidance of such evils, arising from lack of uniformity, seems called for even more clearly in the case of an income tax imposed by a federal dependency. Here by the challenged statute the Territorial Legislature has actually molded a specific against the very evils of inefficiency, wastefulness and unnecessary hardship to taxpayers resulting from divergent federal and local income tax systems, and against which those expert in the field of tax administration have, as we have seen, inveighed for many years. The instant statutory design represents a typical exercise of the legislative prerogative, flexibly to custom tailor the rule to suit the particular case, whose circumstances, as above noted, of vast territory and thinly spread population would inevitably exaggerate the wastefulness of divergent income tax systems. To assert that such constructive accomplishment exhibits negation of legislative power seems ironical. It is submitted the Court should be loathe to follow appellant's sug-

gestion to undo this beneficial legislative plan through a wooden and conceptualistic application of a constitutional aphorism.

As a matter of fact, the asserted delegation is completely the creature of appellant's inference; the Income Tax Act, as the lower court observed (R. 52), did not expressly make any delegation to Congress. The statutory reference is to an external standard, namely, the Internal Revenue Code "as now in effect or hereafter amended". Section 3 B (1). It is submitted in the light of the practical situation under which the Legislature labored, this provision did not effect a substitution of congressional discretion for its own, but the challenged statute itself laid down a sufficiently precise rule. When the actualities are considered, the Legislature thereby set up an existing intelligible principle, or standard, namely, that the Territorial tax should at all times be identical with and amount to one-tenth of the federal income tax. The Legislature was not acting in a vacuum. It must be deemed to have had knowledge of the more than thirty years of federal income tax history. A change in rate of the federal tax of as much as 10% would affect only 1% change in the Alaskan tax; the Alaskan Government is, after all, a component part of the National Government, and where events such as war might call for an extraordinary rise in federal tax rates, the expedience of a corresponding increase in the Alaskan rate might reasonably be anticipated, to remain in force until the Legislature next met. The fundamental bases of the federal income tax have long remained unchanged; the Legislature has observed its imposition and administration in Alaska year in and year out for many years and might reasonably anticipate that between its sessions Congress would make no fundamental alteration in the federal law. In the light

of this knowledge of the needs of Alaska and in view of the enormous advantages derived from territorial uniformity with the federal tax, the Legislature might reasonably have deemed it in the public welfare for the local income tax continually to be geared on the federal. This policy of uniformity was locally chosen by the Legislature in the exercise of its judgment; it was not imposed by the Federal Government. This identity might reasonably in its discretion seem more vital to the interests of the Territory than the fact that the later federal amendments between its sessions might bring into the Territorial law some details which the Legislature would not have originally approved of itself. Since the Legislature convenes biennially for a session of sixty days only (Organic Act, Section 6), the provision that the Alaskan law should follow the federal was requisite (R. 53), in implementing the policy of uniformity. Moreover, in case of necessity, the Governor possessed discretion to call an extraordinary session.

Congress, in amending the Internal Revenue Code, will not be legislating for Alaska or exercising a discretion conferred upon the Alaskan Legislature; on the contrary, the amendments to the Internal Revenue Code are external facts with reference to which the Legislature has set down a standard or principle. The Legislature has not abandoned any real control of the terms or rate of the tax. The rule established in the challenged statute is sufficiently precise and definite in practice and in view of all known realities, among others, of the federal income tax history and the retained power of correction. No legislature is continuously in session and the risk is always present that, as a practical matter, before it reconvenes the law for the time being may cease to reflect its will, as a result of intervening events or acts of others. Artificial con-

ceptualism aside, the future action of Congress upon the federal income tax between the Legislature's sessions is such an external event which the Legislature might here in the public interest reasonably risk.

Our contentions in connection with the instant statute are well summarized and supported by Sutherland in his classic text as follows (1 Statutes and Statutory Construction (3d ed., 1943), Sec. 310, pp. 68-70):

> The adoption of the statutes of another state or of Congress is frequently attacked as being a delegation of legislative power. Such adoption, however, is almost universally sustained when the foreign law as then *existing* is adopted as the law of the adopting state. Where the local legislation is contingent upon the enactment of a statute of another state or of Congress, some courts have held the statutes invalid. And more have held the adoption of prospective legislation in other states and in Congress an unconstitutional delegation. But the better view favors the validity of the statute in all three circumstances. Even in the third situation where another legislature may change not only the operation of local law but its substantive content, the statute should be sustained for its enactment has not amounted to any permanent loss of sovereignty or legislative power. It is possible that for a period of time after the change in the "foreign statute" and before the local legislature convenes, the law of the jurisdiction may not reflect local legislative desires; but this is so even with regard to purely local enactments. The local legislature retains its power to change the statute if it is not satisfactory. The advantages gained by uniformity of law between the states and the advantage of uniformity with congressional legislation, to say nothing of protection against retaliatory legislation, outweighs the disadvantages which may temporarily arise from changes in foreign laws.
>
> Decisions holding that the prospective adoption of foreign legislation is an invalid delegation of

> power seem particularly artificial in many situations where, if the authority was delegated under proper standards to an administrative officer, he would in fact adopt legislation and administrative regulations of other states or of the federal government. Some legislation has been written with this concept in mind.

Again, in Gellhorn, Administrative Law—Cases and Comments (1940) 220-221, the following is said:

> When, * * * a statute is designed to absorb content from extra-state action, the superior-subordinate relationship is no longer present, since the extra-state agency is not subject to the control of the enacting legislature. For this reason, specificity of command should no longer be the measure of the statute's adequacy. Rather, emphasis should be placed upon the statute's containing a sufficiently precise statement of the source and character of the contemplated extra-state action, so that there may be a ready determination whether the action in fact taken is the type of action which the legislature intended to affect the operation of the original enactment. In other words, the inquiry should shift from the question, "Has the legislature *controlled* the act of the subordinate?" to the question, "Has the legislature furnished enough criteria so that the extrinsic legislation may be *identified* as the legislation to which the domestic policy is to conform?" * * *

Directly pertinent are views expressed in a recent article entitled "Cooperative Federalism" by Professor Samuel Mermin, 57 Yale L. J. 1, 18 (November, 1947):

> * * * a state or municipal legislature is familiar enough with the announced political policies of an incumbent federal administration, knows the standards and purposes which have been outlined in a particular piece of federal legislation (e.g the Federal Food, Drug and Cosmetic Act) and may also

> know the identity of the federal administrator, if already appointed. In the light of such knowledge, and of the needs of its own state or city, the legislature may reasonably deem it in the public welfare to adopt as *its* policy, a program of having the local requirements exactly *keep pace* with the federal requirements. This identity may well seem more important to the legislature than the fact that the federal regulations may now or later include some requirements which it would not itself have authorized originally. And such an identity of requirements would be a locally determined local policy, not a policy imposed by the federal government. There is, in this view, no need to talk of "standards" or "contingencies"; the focus of attention of the legislative will is not the detailed, substantive federal requirements (it has already determined that *in general* they comport with its own desires) but the desirability of local-federal uniformity in a particular field.

Referring to the quotations from Gellhorn and Sutherland set forth, *supra,* Professor Mermin concludes (p. 26):

> In short, a sizable body of precedent exists for the invocation of an "intergovernmental relations" exception to the usual delegation analysis. And even on the usual analysis, as already shown, intergovernmental delegations or adoptions are defensible. Already at least two prominent students have criticized the cases which underlie the comment that "it is generally held that the adoption by or under authority of a state statute of prospective Federal legislation, or Federal administrative rules thereafter to be passed, constitutes an unconstitutional delegation of legislative power." It is submitted that the rule should and will give way with the years.

There is no novelty in a territory or state enacting laws adopting or dependent upon federal provisions.

Among such fields have been prohibition, national industrial recovery, migratory birds, narcotics, pure food and drugs, grain standards, air rules. See Comments, 33 Mich. L. Rev. 597, 601-603 (1935); J. P. Clark, The Rise of a New Federalism (1938); *In re Lasswell,* 1 Cal. App. 2d 183, 36 P. 2d 678 (cited by the court below (R. 53)); *Commonwealth* v. *Alderman,* 275 Pa. 483, *supra.* When all is said, the Federal Government is not foreign to its Territory, and its statutes are there domestic. Judicial authority supporting the validity of similar legislation in the tax field is: *Underwood Typewriter Co.* v. *Chamberlain,* 94 Conn. 47, 108 Atl. 154, affirmed, 254 U. S. 113; *McKesson & Robbins, Inc.* v. *Walsh,* 130 Conn. 460, 464-467 35 A. 2d 865; *People* v. *Fire Association of Phila.,* 92 N. Y. 311, 315-324, 44 Amer. Rep. 380, affirmed, 119 U. S. 110; *People ex rel. Pratt* v. *Goldfogle,* 242 N. Y. 277, 291-292, 151 N. E. 452; *Commonwealth* v. *Warner Bros.,* 345 Pa. 270, 27 A. 2d 62.

The Legislature has not abandoned any of its essential powers. The Legislature and not Congress has declared the subject of taxation, fixed the rate and described the property to be taxed, and in so doing had the right to make these flexible, so that they would be adjustable to conditions thereafter arising rather than that it was compelled to adopt a new statute every time some minor change in the federal tax law was made or to forego the enormous public benefit in uniformity.

In summary then, as above stated, it is urged the only question to be passed upon here is the incorporation of *existing* federal law. Should, however, the Court not agree, it is our further contention the statute is equally valid so far as it incorporates by reference the Internal Revenue Code, as hereafter amended, which the Legislature might adopt as a local policy in the exer-

cise of its "unlimited power expressly given" to tax by the Organic Act. *Pacific Fisheries* v. *Alaska, supra,* 269 U. S. 269, 277.

C. *The challenged statute does not improperly delegate to administrative officers the legislative power of the Territory*

1. *The statute makes no improper delegation to the United States Commissioner of Internal Revenue*

The Income Tax Act further provides as follows (Appendix, *infra*):

> SECTION 3. DEFINITIONS.
>
> * * * * * * *
>
> B. REFERENCES TO INTERNAL REVENUE CODE.
>
> * * * * * * *
>
> (2) Whenever any portion of the Internal Revenue Code incorporated by reference as provided in Paragraph (1) of this subsection refers to rules and regulations promulgated by the United States Commissioner of Internal Revenue, or hereafter so promulgated, they shall be regarded as regulations promulgated by the Tax Commissioner under and in accord with the provisions of this Act, unless and until the Tax Commissioner promulgates specific regulations in lieu thereof conformable with this Act.

The contention that this provision constitutes an invalid delegation of Territorial Legislative power finds refutation *a fortiori* in the reasons set forth in the preceding subpoint B. The grounds which justify uniformity in statutory provisions for the federal and territorial income tax equally call for uniformity in administrative construction of the uniform statutes. Besides, the quoted Section 3 B (2) sets down no iron rule; in the event that a federal regulation should in

a special case appear unwise and inapplicable to local circumstances, the statute vests full discretion in the Territorial Tax Commissioner to reject the federal and promulgate in lieu thereof local regulations. The federal regulation does not necessarily and automatically become the local regulation. *Brock* v. *Superior Court,* 9 Cal. 2d 291, 71 P. 2d 209.

Ample support for such local adoption of existing and prospective federal administrative construction of a common statute is found in the leading case of *In re Lasswell, supra,* 1 Cal. App. 2d 183, 203, 36 P. 2d 678, 687, where it was further pointed out that such authority may on occasion properly be vested even in private bodies. Another persuasive precedent, indeed, as here, involving the relationship of a territorial legislature to federal administrative officers, is the decision of the Supreme Court of Puerto Rico in *Irizarry* v. *District Court, supra,* which cites with approval and quotes the *Lasswell* case. The problem raised there was adoption by the insular legislature of prospective regulations to be promulgated by the Federal Administrator under the Federal Emergency Price Control Act. The Puerto Rican court reasoned (p. 98):

> In also providing in effect that the Federal regulations to be promulgated by the Administrator under the Federal statute, shall also be insular regulations, the legislature has simply selected the Federal Administrator as the administrative official who shall have the power "to fill up the details" within the broad but valid standards laid down in the law itself. Once we concede that the standard set up in the statute is valid and that the power to fill up the details may be delegated to an administrative official, the mere fact that the Legislature chooses to vest this power in an appropriate Federal rather than insular official does not in itself invalidate the statute or regulations.

The Puerto Rican court was followed and its language, *supra,* quoted with approval by the Supreme Court of Michigan in *People* v. *Sell,* 310 Mich. 305, 17 N.W. 2d 193, likewise involving local adoption of regulations promulgated and to be promulgated by the Federal Price Administrator. (Pp. 305, 320-326.) The Michigan court also refers to *In re Lasswell, supra.*[4] Mermin, Cooperative Federalism, 57 Yale L. J., *supra,* pp. 4-16, citing many cases, accords with the position here taken.

Finally, there is no showing here whatsoever that any federal Regulations not in existence at the time of the approval of the Territorial statute are applicable to the rights of any taxpayer involved in this litigation. Moreover, there can be no valid objection to administrative rulings on the ground that they are "prospective", since one of the principal purposes in vesting the power of regulation in administrative officers is to enable them to fill in details in particular cases arising *after* passage of a statute.

2. *The statute makes no improper delegation to the Territorial Commissioner of Taxation*

Appellant further asserts that Section 7 D of the Income Tax Act invalidly delegates authority to the Territorial Tax Commissioner. (Br. 29-31.) This section, which is quoted in the footnote,[5] deals with over-

---

[4] *Cleveland* v. *Piskura,* 145 Ohio S. 144, 60 N.E. 2d 919, seems incorrectly decided, and in any event is not in point since, as already noted, the Tax Commissioner is not here automatically required to accept the federal Regulations.

[5] Section 7. Returns and Payment of Tax.

* * * * *

D. Overpayment, Credit and Refund. The tax Commissioner is authorized to credit or refund all overpayments of taxes, all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that are found unjustly assessed or excessive in amount, or in any manner wrongfully collected. The Tax Commissioner shall

payments, credits and refunds. A reading of the statute establishes that appellant's contention is without merit and was properly overruled below for the reasons given by the District Court. (R. 59-60.) The statute lays down an intelligible principle or standard reasonably clear whereby administrative discretion must be governed. *Yakus* v. *United States,* 321 U. S. 414, 424-427; *Bowles* v. *Willingham,* 321 U. S. 503, 514-516; Jaffe, Delegation of Legislative Power, 47 Columbia L. Rev. 359 (1947).

D. *The challenged statute is not invalid for indefiniteness or uncertainty*

Appellant argues that the provisions for incorporation by reference of future amendments to the Internal Revenue Code and the Regulations promulgated by the Commissioner of Internal Revenue cause the Alaskan statute to be void for indefiniteness or uncertainty. (Br. 31-32.) Surely a taxing act is not invalid because its terms may in the future be modified. The Alaskan tax is no more invalid for this reason than is the federal income tax with which it is coordinated.

Again, here, appellant has not shown that any supposed indefiniteness or uncertainty in this or any other respect has been here applied against it or injured it or its employees, and accordingly, this hypothetical objection is not presented to the Court for decision.

---

by means of rules and regulations specify the manner in which claims for credits or refunds shall be made, including adjustments with persons whose sole income in Alaska consists of wages or salary, prescribed limitations and give notice of allowance or disallowance. These rules and regulations shall be based upon the provisions of Secs. 321 and 322 of the Internal Revenue Code insofar as such provisions are consistent with other provisions of this Act. When refund is allowed to a taxpayer, same shall be paid out of the general fund on a Territorial warrant issued pursuant to a voucher approved by the Tax Commissioner.

E. *The challenged statute does not violate the uniformity clause of the Organic Act*

Appellant flatly argues that "the legislature had no authority to enact a graduated net income tax law" at all. (Br. 22.) It is asserted that a graduated income tax infringes the provision of the Organic Act that "all taxes shall be uniform upon the same class of subjects". (Section 9, Appendix, *infra.*) However, like the analogous constitutional provision, the cited clause of the Organic Act requires only geographical uniformity, not intrinsic uniformity. The holding of the Court of Appeals for the First Circuit in *Ballester-Ripoll* v. *Court of Tax Appeals of P. R.,* 142 F. 2d 11, certiorari denied, 323 U. S. 723, citing the relevant Supreme Court decisions and sustaining the Puerto Rican income tax as against a similar objection based on the uniformity clause contained in the Organic Act of Puerto Rico, is completely in point (p. 18):

> The taxpayer also contends that the progressive rates embodied in the Act are in conflict with the requirement of § 2 of the Organic Act that "the rule of taxation in Porto Rico shall be uniform." It is settled that the analogous, constitutional provision that "all Duties, Imposts [or] Excises shall be uniform throughout the United States" (art 1, § 8) requires only geographical uniformity. *Knowlton* v. *Moore,* 1900, 178 U. S. 41, 20 S. Ct. 747, 44 L. Ed. 969. Although it is true that the decision therein was based in part on the words "throughout the United States" which do not appear in the similar provision in the Organic Act, that was merely one ground for the decision. The Supreme Court said, page 92 of 178 U. S., page 767 of 20 S. Ct., 44 L. Ed. 969:
>
> "But one of the most satisfactory answers to the argument that the uniformity required by the Constitution is the same as the equal and uniform clauses which has since been embodied in so many

of the state constitutions, results from a review of the practice under the Constitution from the beginning. From the very first Congress down to the present date, in laying duties, imposts, and excises the rule of inherent uniformity, or, in other words, intrinsically equal and uniform taxes, has been disregarded, and the principle of geographical uniformity consistently enforced."

When Congress came to enact the section entitled "Bill of Rights" of the Organic Act of Puerto Rico, as in the similar section of the Philippine Organic Act, it incorporated the Bill of Rights of our Constitution with little alteration. It is reasonable to suppose that when Congress carried over the requirement of uniformity in taxation from the Constitution into the Organic Act of Puerto Rico, it intended the same meaning for the term that it had always attributed to it in the passing of legislation for continental United States and that had been applied in the courts.

As the Supreme Court said in discussing another provision in the corresponding Bill of Rights for the Philippine Islands:

"How can it be successfully maintained that these expressions of fundamental rights, which have been the subject of frequent adjudications in the courts of this country, and the maintenance of which has been ever deemed essential to our government, could be used by Congress in any other sense than that which has been placed upon them in construing the instrument upon which they were taken?

"It is a well-settled rule of construction that language used in a statute which has a settled and well-known meaning, sanctioned by judicial decision, is presumed to be used in that sense by the legislative body." *Kepner* v. *United States*, 1904, 195 U. S. 100, 124, 24 S. Ct. 797, 802, 49 L. Ed. 114, 1 Ann. Cas. 655.

The guarantees which Congress has extended to Puerto Rico are to be interpreted as meaning what like provisions meant at the time when Congress made them applicable to Puerto Rico. * * *

This holding and particularly the quoted ruling from *Knowlton* v. *Moore,* 178 U. S. 41, 92, refutes appellant's argument that the uniformity clause is the same as the equal and uniform clauses found in some state constitutions. The uniformity provision is violated only where the Legislature discriminates in favor of or against persons in a particular section of the Territory. This principle was again applied in *South Porto Rico Sugar Co.* v. *Buscaglia,* 154 F. 2d 96, 100 (C. A. 1st), where many authorities are cited, and reiterated in *Rullan* v. *Buscaglia,* 168 F. 2d 401, 403 (C. A. 1st), certiorari denied, 335 U. S. 857. Surely, a construction which would deny to Alaska the power to impose a progressive income tax, that is, to levy an income tax with reference to ability to pay, is to be avoided, particularly in view of the full power of taxation which, as has been seen in subpoint A, *supra,* is vested in the Legislature, according to the highest authority. There is no reason to suppose that Congress intended to grant less power in this respect to the Legislature of Alaska than to the legislatures of the sister Territories of Hawaii and Puerto Rico, where graduated income taxes have long been levied.[6]

F. *The criticized classifications made by the statute were well within the area of legislative discretion, and were not arbitrary nor in denial of due process*

Classifications provided in the Income Tax Act can be held violative of the Constitution only "when palpably arbitrary". *Kitagawa* v. *Shipman, supra,* p. 318. What the First Circuit Court of Appeals, sustaining a local taxing statute, said in *South Porto Rico Sugar Co.* v. *Buscaglia, supra,* with respect to the discretion vested

---

[6] Revised Laws of Hawaii (1945), c. 102.

in the Legislature of Puerto Rico, is equally applicable to the Legislature of Alaska, as follows (p. 100):

> The area of permissible legislation for state legislatures is extremely broad. *Wisconsin* v. *J. C. Penney Co.,* 311 U. S. 435, 444, * * *. The discretion of the Legislature of Puerto Rico as far as local matters are concerned is not a great deal narrower. *Puerto Rico* v. *Shell Co.,* 302 U. S. 253, 261-262. * * * Moreover, the burden is on the one who attacks as invalid a legislative enactment to negative every conceivable basis which might support it. *Madden* v. *Kentucky,* 309 U. S. 83, 88; * * * *Metropolitan Casualty Ins. Co. of New York* v. *Brownell,* 294 U. S. 580, 584, * * *.

Indeed, this is also the essential principle which the Supreme Court applied in testing an Alaskan taxing act, in *Alaska Fish Co.* v. *Smith, supra,* saying (p. 49):

> The requirement of uniformity in § 9 is disposed of by what we have said of the classification when considered with reference to the Constitution.

Similarly, in *Pacific Fisheries* v. *Alaska, supra,* a local taxing act was sustained against attack for alleged denial of due process of law, since (p. 278):

> The inequalities of the tax are based upon intelligible grounds of policy and cannot be said to deny the petitioner its constitutional rights.

In *Madden* v. *Kentucky,* 309 U. S. 83, 88, in language much quoted which is here pertinent, the Supreme Court said:

> Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.

Again, in *Lawrence* v. *State Tax Comm.,* 286 U. S. 276, the Supreme Court said (p. 284):

> The equal protection clause does not require the state to maintain a rigid rule of equal taxation, to resort to close distinctions, or to maintain a precise scientific uniformity; and possible differences in tax burdens not shown to be substantial or which are based on discriminations not shown to be arbitrary or capricious, do not fall within constitutional prohibitions.

The Fourteenth Amendment clearly has no application to the Territory.[7] *South Porto Rico Sugar Co.* v. *Buscaglia, supra,* p. 101; *Anderson* v. *Scholes,* 83 F. Supp. 681, 687 (Alaska, 3d). In last analysis, the tax must be tested by the due process clause of the Fifth Amendment, with respect to which it was said in the *South Porto Rico Sugar Co.* case, *supra,* p. 100:

> "To be unconstitutional under the due process clause a taxing statute must be so arbitrary as to amount to a confiscation or a clear and gross inequality or injustice." Mertens, Law of Federal Taxation, Vol. 1, § 4.09. The effect of this standard has been that the due process clause of the Fifth Amendment has not often been used as a means of declaring invalid a federal tax statute. See Mr. Justice Stone dissenting in *Heiner* v. *Donnan,* 285 U. S. 312, 338, 52 S. Ct. 358, 76 L. Ed. 772.

Examining appellant's principal criticisms of the statute in this light, it seems evident that appellant has not established that the statute is palpably arbitrary

---

[7] The Civil Rights Act, Revised Statutes, Section 1977 (8 U.S.C. 1946 ed., Sec. 41), quoted by appellant (Br. 19-20), which guarantees to all persons in the Territory the equal benefit of all laws for security of persons and property as is enjoyed by *white* citizens, on its face has no application to the instant issue, as indeed its well known history alone must confirm. Further, even if applicable, it would add nothing to the rule that sustains a classification not palpably arbitrary or capricious.

and certainly has not sustained the heavy burden of negativing every conceivable basis which might support it.

(a) The Legislature in its discretion might recognize the existence of and deem it advisable to afford taxpayers the benefit in computing income for 1949 of operating losses which had been incurred in preceding years, and accordingly was not, contrary to appellant's contention (Br. 23-24), palpably arbitrary in adopting by reference the net operating loss carryover provisions contained in Section 122 of the Internal Revenue Code (26 U. S. C. 1946 Ed., Sec. 122). In determining what income should be taxed in the first year of the law, as well as in any subsequent year, the Legislature might, within the area of legislative discretion properly recognize the effect of transactions during the preceding years upon certain taxpayers' incomes.

(b) The same answer is true with respect to the application of the unused capital loss carryover provided for by Section 117 (e) of the Internal Revenue Code 26 U. S. C. 1946 Ed., Sec. 117). (Br. 24.)

(c) Similarly, it is not established that the classifications with respect to appointment of salary and other income earned in Alaska by nonresidents is so palpably arbitrary as to violate fundamental law and that no basis may be conceived which might support it. (Br. 24-28.) [8] No iron rule of apportionment is laid down but the Tax Commissioner is expressly empowered upon a taxpayer's petition to grant relief in cases of hardship where the general formulae apply unfairly (Section 5 A (2)(c)), and the Tax Commissioner's ruling on such a petition is subject to court review (Section 13). Appellant's employees were

[8] Similar contentions are made in the brief filed on behalf of *Alaska Packers Association* as *amicus curiae,* pp. 3-14.

either residents of Alaska, with respect to whom no question of apportionment is involved, or seamen, in whose case an apportionment formula is expressly provided. (Section 5 B (1), Appendix, *infra.*) Hence, the alleged omission of an apportionment formula for other nonresident wage earners is not before the Court. It may well be that when such a case does arise, the statute will be construed to include only the wages or salary of such nonresidents earned in Alaska. Section 5 B. The seamen, who are the only nonresidents involved in this case, are taxed only in proportion to pay earned in Alaska waters. Certainly, there is nothing inherently arbitrary in this method of apportionment. *Shaffer* v. *Carter,* 252 U. S. 37; *Travis* v. *Yale & Towne Mfg. Co.,* 252 U. S. 60.

Nor is there anything in this record to show that the criticized method of apportionment with respect to operations of other persons, such as foreign corporations doing business in the Territory, is inherently arbitrary. *Underwood Typewriter Co.* v. *Chamberlain,* 254 U. S. 113, 121; and authorities there listed in fn. 1 on p. 121; Silverstein, Problems of Apportionment in Taxation of Multistate Business, 4 Tax L. Rev. 207 (January, 1949).

In any event, it is a complete answer that these questions with respect to apportionment formulae, which appellant and the *amicus* party, Alaska Packers Association, seek to raise, are, on well settled principles, not before this Court for decision at all. Only those to whom a statute applies and who are adversely affected can draw into question its validity on constitutional grounds. (See authorities cited in subpoint B (1) of this brief, *supra.*) Thus, Mr. Justice Holmes, speaking for the Supreme Court, held in *Hatch* v. *Reardon,* 204 U. S. 152, 160-161:

> But there is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the tax laws of a State on constitutional grounds. This limit has been fixed in many cases. It is that unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all. *Supervisors* v. *Stanley,* 105 U. S. 305, 311; *Clark* v. *Kansas City,* 176 U. S. 114, 118; *Lampasas* v. *Bell,* 180 U. S. 276, 283, 284; *Cronin* v. *Adams,* 192 U. S. 108, 114. If the law is valid when confined to the class of the party before the court, it may be more or less of a speculation to inquire what exceptions the state court may read into general words, or how far it may sustain an act that partially fails. With regard to taxes, especially, perhaps it might be assumed that the legislature meant them to be valid to whatever extent they could be sustained, or some other peculiar principle might be applied. See *e. g. People's National Bank* v. *Marye,* 191 U. S. 272, 283.

How the statute may be applied under other sets of facts, especially in view of the broad discretion afforded to the Tax Commissioner above referred to (Section 5 A (2)(c)), is a matter of sheer speculation, and not presented here for decision in any sense. *Plymouth Coal Co.* v. *Pennsylvania,* 232 U. S. 531, 534; *Federation of Labor* v. *McAdory,* 325 U. S. 450, 463.

G. *Provision for suspension of licenses to do business as a penalty for nonpayment of the income tax was not unconstitutional*

Section 12 C of the Income Tax Act authorizes the suspension of a license to conduct any business issued

by Alaska to any taxpayer, whether a resident or not, should he fail to pay the tax. The suspension is to be imposed until the tax is paid in full. No license belonging to appellant has been suspended or threatened to be suspended here, and again this question which appellant raises (Br. 28-29), claiming infringement of the Commerce Clause of the Federal Constitution (Article I, Section 8) is hypothetical and not here for decision. As the court below well noted, Section 12 C in any event is not reasonably susceptible of a construction that payment of the tax is a condition precedent to the right to carry on business in the Territory in the first instance. Certainly, forfeiture of any territorial license may be imposed as a sanction to assist in collection of past due territorial taxes. (R. 55-56.)

H. *Ratification in the instant Act of the withholdings made under the repealed Chapter 3 of the Session Laws (1949) was within the legislative power*

Section 16 of the Income Tax Act (Appendix, *infra*) repealed the earlier Income Tax Act passed by the Extraordinary Session on January 22, 1949 (Chapter 3 of the Session Laws of Alaska (1949)), but ratified and confirmed tax withholdings which had been effectuated thereunder. Appellant asserts this ratification was ineffective. (Br. 34-35.) The court below, as already noted in the Statement of Facts, *supra,* held that the Legislature in the Extraordinary Session had not been legally constituted, but that the Regular Session which passed the instant statute validly ratified or confirmed tax withholdings theretofore made. (R. 46-51, 66-67.) The sustained objections to the January statute were merely to the composition of the session passing it; not to any asserted lack of power in the Legislature, when properly constituted, to impose an

income tax and prescribed withholdings. The instant statute, while repealing the earlier law, imposed the tax retroactively for the same period as was covered by the earlier law, namely, to taxable years beginning January 1, 1949. It is, of course, settled that an income tax may be imposed retroactively, for which, indeed, there is ample congressional precedent. *Welch* v. *Henry,* 305 U. S. 134; *Wilgard Realty Co.* v. *Commissioner,* 127 F. 2d 514 (C.A. 2d), certiorari denied, 317 U. S. 655. The taxes withheld were, thus, due under the terms of the valid instant statute and no adequate reason appears why the Legislature could not, in the exercise of its discretion, ratify and confirm their prior withholding. See, also, authorities cited in the opinion below. (R. 60.)

I. *The withholding provisions on seamen's wages are not in conflict with federal statutes*

As already stated, the taxpayer employees of appellant were both resident Alaskans who were agents, assistant agents and shore employees (R. 64), and seamen, who were nonresidents of the Territory. Approximately 75% of the time spent on voyages in the corporation's vessels are in territorial waters and in waters off shore from the coast of Alaska; part of the voyages are made through Canadian waters and part outside the three mile limit off the Alaskan coast. (R. 62-63.)

In the case of employees generally (Sections 5 B and 8 A and B, Appendix, *infra*), the tax levied is 10% of the federal income tax collected by salary deduction and withholding by employers under the Internal Revenue Code, Sections 1621 to 1627, being subchapter D of Chapter 9 (26 U.S.C. 1946 ed., Secs. 1621-1627). This general rule, however, is further particularly

limited in the case of seamen by the following provision (Section 5 B (1)):

> (1) The tax levied by this subsection shall apply to that portion of the voyage pay of vessel personnel of interstate carriers engaged in the Alaska trade which is earned in the waters of Alaska, * * *.

Thus, it is to be noted that the tax is not imposed on seamen engaged in foreign trade but only on the personnel of coastwise or interstate carriers, and limited to the portion of the pay earned in Alaska. For purposes of the federal income tax the wages of seamen so engaged are regarded as from sources within the United States,[9] and are further *subject to withholding* deductions.[10] If such services are performed partly

---

[9] Treasury Regulations 111, relating to the Income Tax under the Internal Revenue Code, Section 29.119-4, provide:

> SEC. 29.119-4. *Compensation for Labor or Personal Services.* —* * * wages received for services rendered inside the territorial limits of the United States and wages of an alien seaman earned on a coastwise vessel are to be regarded as from sources within the United States. * * *

Alaska is, of course, for the purposes of the Internal Revenue Code, included within the term "United States". 8 Mertens, Law of Federal Income Taxation, Sec. 45.33, p. 308; Internal Revenue Code, Sec. 3797 (a) (9) (26 U.S.C. 1946 ed., Sec. 3797).

[10] Treasury Regulations 116, relating to the collection of income tax at source on wages under the Internal Revenue Code, Section 405.102 (h) (as amended by T. D. 5645, 1948-2 Cum. Bull. 14, 25), provide:

> SEC. 405.102. *Exclusions from Wages.*— * * *
>
> * * * * *
>
> (h) *Remuneration for services performed outside the United States.*— * * *
>
> For the purposes of this subsection, services performed on or in connection with (1) an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States or (2) any vessel as an employee of the United States employed through the War Shipping Administration are not considered as services performed outside the United States. Hence, the remuneration paid for such services constitutes wages subject to withholding within the meaning of section 1621 (a) and these regulations unless the employee performing such services is a nonresident alien.

within and partly without the United States, the apportionment formula for federal taxation is on a time basis,[11] and thus closely resembles the provision of the Alaskan statute.

Appellant asserts that the withholding provisions of the Territorial Act are invalid so far as applicable to its seamen employees for conflict with other federal statutes (Br. 11-14), citing *American Hawaiian S. S. Co.* v. *Fisher,* 82 F. Supp. 193 (D. Ore.). The principal federal statute claimed to be infringed is the Act of March 4, 1915, c. 153, 38 Stat. 1164, Sec. 12 (46 U.S.C. 1946 ed., Sec. 601) quoted, so far as pertinent, in the footnote.[12] The lower court correctly overruled this contention and held there is no conflict between the territorial statute and this federal legislation. (R. 58-59.) The familiar withholding device, common to many taxing statutes, is certainly not accurately characterized by nor does it fall within the meaning of an "attachment or arrestment from any court". Con-

---

[11] Thus, Treasury Regulations 111, *supra,* Section 29.119-4, reads in this connection:

> If no accurate allocation or segregation of compensation for labor or personal services performed in the United States can be made, or when labor or service is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined by an apportionment on the time basis, i.e., there shall be included in the gross income an amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made. * * *

---

[12] Sec. 12. That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. * * *

gress and the Treasury obviously did not understand by the Internal Revenue Code amendments provided in the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, and the Treasury Regulations, *supra,* promulgated thereunder, that collection through withholdings from the salaries of seamen, such as those here involved, was in conflict with or to any extent repealed the earlier statutes upon which appellant relies.

J. *In any event, the Legislature intended the valid provisions of the statute to be severable, and remain in force and effect, should the criticized provisions be held invalid*

Section 15 of the Act (Appendix, *infra*), provides:

> Section 15. SEVERABILITY. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Contrary to appellant's contention (Br. 32-34), especially in view of the quoted Section 15, it appears clear that the Legislature would have enacted the balance of the statute and intended it to possess full force and effect, even if the parts criticized by appellant were deemed invalid. For example, it is not reasonable to suppose that the Legislature would have vitiated the entire income tax for 1949 and thus seriously imperiled the current support of the Territorial government, in the event it should have learned that for later years the Alaskan Act could not properly be continuously maintained uniform with the Internal Revenue Code.

The holding of the Court of Appeals for the First Circuit, and the authorities cited therein, in *San Juan Trading Co.* v. *Sancho,* 114 F. 2d 969, certiorari denied, 312 U. S. 702, construing a similar severability provi-

sion in a Puerto Rican statute, state the settled rule (p. 975):

> Section 108 of the Internal Revenue Law of Puerto Rico has the usual provision that if any provision of the Act or its application to any person or circumstances be declared invalid, the remainder of the Act and the application of those provisions to other persons or circumstances should not be affected. Such a legislative declaration indicates that if any of the provisions are found invalid, the Legislature would have passed the Act without such provisions and desires the Act to be considered as not containing them. *Williams* v. *Standard Oil Co.,* 1929, 278 U. S. 235, 49 S. Ct. 115, 73 L. Ed. 287, 60 A.L.R. 596. It is elementary that where part of a statute is invalid that which is unobjectionable will stand if the Legislature did not intend the good and bad portions to stand or fall together. *Bowman* v. *Continental Oil Co.,* 1921, 256 U. S. 642, 41 S. Ct. 606, 65 L. Ed. 1139; *Loeb* v. *Columbia Township Trustees,* 1900, 179 U. S. 472, 489, 21 S. Ct. 174, 45 L. Ed. 280.

Had the Legislature foreseen any such alleged invalidity it would have intended the balance of the statute to remain in effect. *Ballester-Ripoll* v. *Court of Tax Appeals of P. R., supra,* p. 19.

Finally, as already discussed and on authorities cited in subpoint B (1) *supra,* appellant has no standing here to raise an alleged issue of severability for it cannot show that it has been injured by any purportedly invalid part and complaints on grounds of nonseverability may be considered only after a person injured by the alleged invalid portion has requested relief.

CONCLUSION

The judgment of the District Court should in all respects be affirmed.

Respectfully submitted,

THERON LAMAR CAUDLE,
Assistant Attorney General.

ELLIS N. SLACK,
I. HENRY KUTZ,
Special Assistants to the Attorney General.

MASTIN G. WHITE,
Solicitor, Department of the Interior.

IRWIN W. SILVERMAN,
Chief Counsel, Division of Territories and Island Possessions, Department of the Interior, Of Counsel.

NOVEMBER, 1949.

APPENDIX

Constitution of the United States of America:

ARTICLE IV

* * * * *

Section 3. * * *

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Organic Act of Alaska (Act of August 24, 1912), c. 387, 37 Stat. 512:

SEC. 3. CONSTITUTION AND LAWS OF UNITED STATES EXTENDED.—That the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States; * * * that except as herein provided all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature: *Provided,* That the authority herein granted to the legislature to alter, amend, modify, and repeal laws in force in Alaska shall not extend to the customs, internal-revenue, postal, or other general laws of the United States or to the game, fish, and fur-seal laws and laws relating to fur-bearing animals

of the United States applicable to Alaska, or to the laws of the United States providing for taxes on business and trade, or to the Act entitled "An Act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska, and for other purposes," approved January twenty-seventh, nineteen hundred and five, and the several Acts amendatory thereof: *Provided further,* That this provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses. * * *

(48 U.S.C. 1946 ed., Secs. 23 and 24.)

SEC. 4 [as amended by the Act of November 13, 1942, c. 637, 56 Stat. 1016]. THE LEGISLATURE.—That the legislative power and authority of said Territory shall be vested in a legislature, * * *.

(48 U.S.C. 1946 ed., Sec. 67.)

SEC. 9 [as amended by the Act of June 3, 1948, c. 396, 62 Stat. 302]. LEGISLATIVE POWER—LIMITATIONS.—The legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, * * * Provided, That all authorized indebtedness shall be paid in the order of its creation; all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws, and the assessments shall be according to the actual value thereof. * * *

(48 U.S.C. 1946 ed., Secs. 77 and 78.)

SEC. 20. LAWS SHALL BE SUBMITTED TO CONGRESS.—That all laws passed by the Legislature of the Territory of Alaska shall be submitted to the Congress by the President of the United States, and, if disapproved by Congress, they shall be null and of no effect.

(48 U.S.C. 1946 ed., Sec. 90.)

Session Laws of Alaska (1949), c. 115, approved March 26, 1949 (Alaska Net Income Tax Act):

Section 3. Definitions.

A. In General: For the purpose of this Act—

* * * * *

(8) The words "Internal Revenue Code" mean the Internal Revenue Code of the United States (53 Stat. 1) as amended or as hereafter amended.

* * * * *

B. References to Internal Revenue Code.

(1) Whenever the Internal Revenue Code is mentioned in this Act, the particular portions or provisions thereof, as now in effect or hereafter amended, which are referred to, shall be regarded as incorporated in this Act by such reference and shall have effect as though fully set forth herein.

(2) Whenever any portion of the Internal Revenue Code incorporated by reference as provided in Paragraph (1) of this subsection refers to rules and regulations promulgated by the United States Commissioner of Internal Revenue, or hereafter so promulgated, they shall be regarded as regulations promulgated by the Tax Commissioner under and in accord with the provisions of this Act, unless and until the Tax Commissioner promulgates specific regulations in lieu thereof conformable with this Act.

* * * * *

Section 5. Tax on Individuals, Fiduciaries, Corporations and Banks.

A. General Rule. There is hereby levied and there shall be collected and paid for each taxable year upon the net income of every individual (except employees whose sole income in Alaska consists of wages or salary upon which tax has been withheld as referred to in subsection B of this Section), fiduciary, corporation and bank, required

to make a return and pay a tax under the Federal income tax law, a tax computed by either one of the following methods:

(1) a tax equal to 10 percent of the total income tax that would be payable for the same taxable year to the United States under the provisions of the Internal Revenue Code without the benefit of the deduction of the tax payable hereunder to the Territory.

(2) a tax equal to 10 percent of that portion of the total income tax that would be payable under the provisions of the Internal Revenue Code without the benefit of the deduction of tax payable hereunder to the Territory, that gross receipts derived from sources within the Territory, payroll and value of tangible property located in the Territory, bears to the total gross receipts from sources within and without the Territory, payroll and value of tangible property within and without the Territory.

(a) Determination of Gross Receipts. Gross receipts from sources within the Territory shall consist of interest, rents, royalties, gains, dividends, all other income and gross income received or derived in connection with property owned or a business or trade carried on and salaries, wages and fees for personal services performed within the Territory. Income received or derived from sales wherever made of goods, wares and merchandise manufactured or originating in the Territory shall be considered to be a part of gross receipts from sources within the Territory.

* * * * *

B. Employees. There is hereby levied upon and there shall be collected from every employee including persons referred to in subsection (C) of Section 1621 of the Internal Revenue Code) whose sole income in Alaska during the taxable year consists of wages or salary, a tax in the amount of ten

percent of the tax deducted and withheld under the provisions of sub-chapter (D), Chapter 9, of the Internal Revenue Code, which tax is to be withheld by the employer under the provisions of Section 8 of this Act. * * *

(1) The tax levied by this subsection shall apply to that portion of the voyage pay of vessel personnel of interstate carriers engaged in the Alaska trade which is earned in the waters of Alaska, including the waters over the continental shelf. The tax shall likewise apply to that portion of the pay earned in Alaska of the personnel of carriers operating vehicles or airplanes on land or in the air on routes to and from Alaska.

* * * * *

Section 7. Returns and Payment of Tax.

A. Tax Returns. Every individual (except an employee whose sole income in Alaska during the taxable year consists of wages or salary upon which tax has been withheld), fiduciary, partnership, corporation and bank required to make a return under the provisions of the Internal Revenue Code, shall at the same time render to the Tax Commissioner a return setting forth: (1) the amount of tax and the balance of tax due or overpayment of tax as reported on returns made to the Collector of Internal Revenue; (2) the amount of tax due under this Act, less credits claimed against tax; (3) such other information for the purpose of carrying out the provisions of this Act as may be prescribed by the Tax Commissioner. The return shall either be on oath or contain a written declaration that it is made under the penalty of perjury, and the Tax Commissioner shall prescribe forms accordingly. The provisions of Sections 51, 52 and 53 of the Internal Revenue Code shall be adopted insofar as such provisions are consistent with other provisions of this Act.

B. Payment of Tax. The total amount of tax imposed by this Act shall be due and payable to the

Tax Commissioner at the same time and in the same manner as the tax payable to the United States Collector of Internal Revenue under the provisions of Section 56 of the Internal Revenue Code.

C. Federal Income Tax Return. Any taxpayer, upon request by the Tax Commissioner, must furnish to the Tax Commissioner a true and correct copy of any tax return which he has filed with the United States Collector of Internal Revenue. Every taxpayer must notify the Tax Commissioner in writing of any alteration in, or modification of, his Federal income tax return and of any recomputation of tax or determination of deficiency (whether with or without assessment). A full statement of the facts shall accompany this notice, which must be filed within twenty days after such modification, recomputation or determination of deficiency, and the taxpayer must pay the additional tax or penalty hereunder.

* * * * *

Section 8. Collection of Income Tax at Source.

A. Definitions. As used in this Section, with the exception of Federal government employees, the terms "wages", "payroll period", "employee", and "employer" shall have the meaning attributed to such terms by subsections (a), (b), (c), and (d), respectively, of Section 1621 of the Internal Revenue Code.

B. Requirement of Withholding. Every employer making payment of wages or salaries shall deduct and withhold a tax in the amount of 10 per cent of the tax deducted and withheld under the provisions of subchapter (D), Chapter 9 of the Internal Revenue Code. Every employer making a deduction and withholding as outlined above, shall furnish to the employee upon request a record of the amount of tax withheld from such employee on forms to be prescribed, prepared and furnished by the Tax Commissioner.

* * * * *

Section 14. Administrative Powers.

A. Tax Commissioner to Administer. The Tax Commissioner is hereby required to administer the provisions of this Act.

* * * * *

C. Rules and Regulations. The Tax Commissioner shall prescribe and furnish all necessary forms, and promulgate and publish all needful rules and regulations in plain and concise language conformable herewith for the assessment and collection of any tax herein imposed. He shall apply as far as practicable the administrative and judicial interpretations of the Federal income tax law. The Tax Commissioner shall also prepare a concise statement of the contents of the Code sections referred to herein for the information of the taxpayer and make the same available to the taxpayer making a return.

* * * * *

Section 15. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of the Act and such application to other persons or circumstances shall not be affected thereby.

Section 16. Repeals. The tax contained in subsection 3rd of Sec. 35-1-11 ACLA 1949, which reads as follows: "three-quarters of one percent of the net profits from supplies sold" is hereby repealed; and the unnumbered paragraph between subsections (f) and (g) of subsection 7th of Sec. 35-1-11 ACLA 1949, which imposes a net income tax on canneries, is hereby repealed; and the tax contained in House Bill No. 1 of the Extraordinary Session of the Nineteenth Legislature, which will become Ch. 3 of the Session Laws of said session, is also hereby repealed, but tax withholdings effectuated and other administrative steps taken thereunder are hereby ratified and confirmed and made applicable hereunder so far as conformable with the provisions hereof.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 862122 290